

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No.....287/2001

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(AC/07/2017)

FORM NO. 4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

ORDER SHEET

Original APPLICATION NO. 287 OF 2001APPLICANT (s) C.K. SharmaRESPONDENT (s) U.O.I. (GOM)ADVOCATE FOR APPLICANT(s) B.K. Sharma, S. Sauma, U.K. NeirADVOCATE FOR RESPONDENT(s) Cafe. Mr. X.K. Phinkar for Rspndt. No. 2 & 4.
Mrs. M. Das for Gmt. of Assam.

Notes of the Registry	dated	Order of the Tribunal
<p>This application is in form but pending the Coordination Petition is filed, not filed vide M.P. No. C.P. for Rs. 50/- deposited vide IPO/BD No. 64/24/656.</p> <p>Dated..... <u>20.7.2001</u></p> <p>Dy. Registrar</p> <p><i>[Signature]</i> 30/7/2001</p>	2-8-01	<p>Heard Mr. B.K. Sharma, learned Sr. counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted. Returnable by 2 weeks.</p> <p>Mr. B.C. Pathak, learned Addl.C.G.S. C. accepts notice on behalf of respondents no.1 and Mrs. M.Das accepts notice on behalf of respondents nos. 2 and 4. No counsel for the Meghalaya Government.</p> <p>List on 20-8-2001 for admission.</p> <p><i>[Signature]</i> Member</p>
<p>Notice prepared and sent to D/S. for issuing the summons No 3 by Regd. A/D. vide D/No <u>2971</u> on <u>13/8/01</u></p> <p><i>[Signature]</i> 6/8/01.</p>	20.7.01	<p><i>[Signature]</i> Vice-Chairman</p> <p>NS 2/8/01</p> <p>List on 31.8.01 for Admission.</p> <p><i>[Signature]</i> Member</p>
	31.8.01	<p><i>[Signature]</i> Vice-Chairman</p> <p>lm 31.8.01</p> <p>List on 11/9/01 for admission.</p>

By order
[Signature]
 31/8

11.9.01 List the matter on 5/10/01 for admission
as prayed for learned counsel for the respondents.

IC (Usha)
Member

Vice-Chairman

mb

5.10.01 Heard Mr.S.Sarma, learned counsel for the applicant and also Mr. B.C.Pathak, learned Addl. C.G.S.C., Mr.Y.K.Phukan, counsel for the State of Assam, Mrs.B.Dutta, counsel for the State of Meghalaya.

Learned counsel for the respondents seeks
one two weeks time to file reply. Prayer is allowed.
List on 13/11/01 for admission.

IC (Usha)
Member

Vice-Chairman

mb

13.11.01 List on 5/12/01 for admission.

IC (Usha)
Member

Vice-Chairman

mb

5.12.01 Respondent Nos. 2 and 4 have filed the written statement. Respondent No.1 is yet to file written statement.

Mr.S.Sarma, learned counsel for the applicant prays for time to file rejoinder. Prayer is accepted.

List on 3.1.02 for admission.

Member (J)

IC (Usha)
Member (A)

mb

3.1.02 On the prayer of Mr.S.Sarma, learned counsel for the applicant, the case is adjourned. List again on 10.1.2002 for admission.

IC (Usha)

Member

Vice-Chairman

mb

3

O.A. No. 287/2001

Notes of the Registry

Date

Order of the Tribunal

10.1.02

Present : Hon'ble Mr. Justice D.N. Chaudhury, Vice-Chairman.
Hon'ble Mr. K.K.Sharma, Administrative Member.

The matter pertains to conferment of supertime scale. We are however not inclined to pass any order from our end on the ground that the matter can be taken care of by the authority concerned. We are of the view that such matter needs to be looked into by the respondents at the first instance. The applicant has already submitted his representation narrating his grievances. In the set of circumstances, we direct the respondents to dispose of the representation. Accordingly, respondents are directed to consider the representation and pass necessary order thereon.

It has been stated by Sri B.K.Sharma, learned Sr. counsel for the applicant that the applicant by this time has completed 16 years service. Therefore, there is no bar to consider the case of the applicant for conferment of the supertime scale. We have already issued the direction on the respondents to consider the representation. The respondents shall take note of all these things while considering the representation. Needless to state that the applicant in addition may also submit a fresh representation within four weeks from today. In the event such representation is submitted, the same shall also be considered by the respondents within a reasonable time.

The application is disposed of. No order as to costs.

I C U Shetty

Member

Vice-Chairman

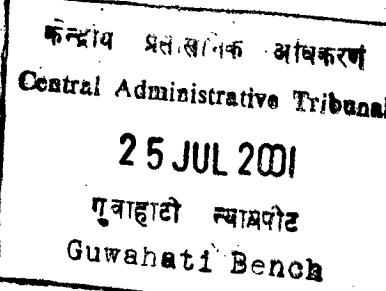
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REFERENCES

Notes of the Registry Date Order of the Tribunal

Date

Order of the Tribunal



THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

D.A. No. 287 of 2001

Shri Chandra Kanta Sharma

... Applicant

- Versus -

Union of India & Ors.

... Respondents

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Filed by : U. K. NAIR

Advocate

FILED B4:

Shri C.K. Sharma
Applicant
Through
Krishnan Nair &
Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

(Application under Section 19 of the Central
Administration Tribunal Act, 1985)

D.A. No. 287 of 2001

BETWEEN

Shri C.K. Sharma, IAS, Secretary to
the Government of Assam, Food & Civil
Supplies Deptt., Dispur, Gauhati.

... Applicant.

- AND -

1. Union of India, represented by the Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pension, (Department of Personnel & Training), New Delhi.
2. The State of Assam, represented by the Chief Secretary, Government of Assam, Dispur, Guwahati-6.
3. The State of Meghalaya, represented by the Chief Secretary, Government of Meghalaya, Shillong.
4. The Secretary to the Government of Assam, Department of Personnel (Personnel-A), Dispur, Guwahati-5.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The present application is not directed against any order but has been filed making a grievance against denial of promotion to the Applicant to the super time scale in the IAS.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and as such he is entitled to all the rights protections and privileges as gaurenteed by the constitution of India.

4.2 That the Applicant belongs to the Assam-Meghalaya Joint Cadre of IAS and is serving in the Assam Wing of the said Joint Cadre.

4.3 That the Applicant originally belongs to the 1970 batch of Assam Civil Service-I Cadre, to which service he was inducted pursuant to a selection for the service by the APSC in the year 1970, in which he stood first.

4.4 That after having illustrious service to his credit in the ACS cadre, the Applicant was appointed on promotion to IAS pursuant to his selection for the same and he has been assigned his Year Of Allotment as 1986. Be it stated here that 3 other officers namely Shri M.K. Baruah, B.K. Gohain and T.R Dey who were also selected along with the Applicant for promotion to IAS have also been assigned 1986 as their Year Of

Allotment. Thus, the Applicant and the said 3 officers belong to 1986 batch of IAS officers in the Assam Wing of the said joint cadre and naturally are entitled to equal treatment and opportunity in the matter of their promotion.

4.5 That the Applicant and the said 3 officers were promoted to the selection grade with effect from 1.1.99 by a notification dated 23.2.99.

A copy of the said notification dated 23.2.99 is annexed as Annexure-A.

4.6 That in terms of the provisions of the IAS (Pay) Rules, 1954, as it originally stood, an officer was entitled to be promoted to the Supertime scale after his promotion to the selection grade for which eligibility criteria is entry into the 14th year of service from the year of Allotment. However, no length of service was specified for promotion to the supertime scale. However, by an amendment brought into the said provisions of the Rules by a notification No. 20011/1/99-AIS(II)-A dated 5.4.2000, the eligibility criteria has been laid down to be completion of 16 years of service calculated from the year of allotment. However, it has been provided in the said amended Rule that an officer can be promoted to the supertime scale even before completion of requisite length of service with prior approval of the Central Government.

A copy of the said notification dated 5.4.2000 is annexed as Annexure-B.

4.7 That the Government of Assam, has been pleased to promote many IAS officers to the supertime scale even before completion of 16 years of service. Mention may be made of the names of :-

- (i) Shri Rajib Kr. Bora, IAS, Shri Saraswati Praasad, IAS and Shri Sumit Jeroth, IAS, were promoted to supertime scale vide memo No. AAI.18/97/113-D dated 1.6.2000. They were so promoted on completion of 15 years of service in IAS Cadre.
- (ii) Kumar Sanjay Krishna, IAS and Shri J.P. Saikia were promoted to the supertime scale vide memo No. 18/97/119-B dated 28.9.2000. They were so promoted upon completion of 15 years of service in IAS Cadre.
- (iii) Shri Rajiv Kapoor, IAS, Shri B.K. Bohain, IAS and Shri M.K. Baruah were promoted to supertime scale vide memo No. AAI.28/2000/3-C. They were so promoted upon completion of 15 years of service in IAS Cadre.

It may be mentioned here that even before issuance of the Annexure-B notification amending the provisions of the IAS (Pay), Rules, 1954, there existed Government instruction laying down the criteria to be followed for promotion to the supertime scale which specified that 16 years of service was required for promotion to the supertime scale, but inspite of the same many officers were promoted to the supertime scale even before completion of 16 years of service, throughout India including the State of Meghalaya.

of the above officers are annexed as Annexure-C, D and E respectively.

4.8 That the Applicant states that the examples given above to indicate that the officers are being promoted to the supertime scale even before completion of 16 years of service is only illustrative and not exhaustive. On earlier occasions also many officers in the IAS, Viz., Shri A.K. Sachan, Shri J.P. Meena, Shri Alok Kumar, Shri V.B. Pyarelal, Shri N.C. Baruah, Shri J.S.L. Vasava etc., were promoted to the supertime scale before completion of 16 years of service. In the case of J.S.L. Vasava, when his pay slip in Supertime scale was withheld by the Accountant General, Assam, on the ground of his promotion being illegal having been made before completion of 16 years of service, this Hon'ble Tribunal came to the rescue of Shri Vasava on his approach to this Hon'ble Tribunal by filing an OA and it was ordered that Shri Vasava was entitled to draw his salary in his promotional post in supertime scale.

4.9 That the Applicant states that from the instances given above, it will be seen that the batchmate of the Applicant Shri B.K. Gohain and Shri M.K. Baruah, have been promoted to the supertime scale by the Government of Assam, although they also did not have requisite length of service i.e. 16 years of service calculated from the year of allotment. Their case having been considered and their being more vacancies available to accommodate the Applicant, his case also ought to have been considered along with said Shri Baruah and Shri

Gohain. However, for the reasons best known to the authorities, the Applicant was left out and was not promoted resulting in discrimination.

4.10 That as regards the vacancy position it is stated that there are altogether 39 vacancies at the level of supertime scale which include the deputation reserve quota as well. Presently, out of the said 39 vacancies, only 27 officers are in position. Seven officers are on deputation within the State. The Applicant craves leave of the Hon'ble Tribunal to give the names of the said 27 plus 7 officers as and when required.

4.11 That in view of the above, there are five clear vacancies in the supertime scale in addition, 3 more vacancies have arisen in the recent past on retirement of 2 officers viz., Shri D.C. Barman, (retired on 28.2.2001) and Shri N.C. Baruah (retired on 31.5.2001) and Shri K.K. Mittal who has been sent on Central deputation in June 2001. This gives 8 clear vacancies in the supertime scale and as against this there are only 4 officers in the selection grade to be left out from their promotion to the supertime scale. Apart from applicant, he the 3 other officers are Shri T.R. Dey, Shri N.G. Baruah and Shri Biren Dutta.

4.12 That the Applicant being aggrieved by his non-promotion to the supertime scale, had submitted a representation to the Government of Assam on 18.1.2001 but the same is yet to be attended to and the Applicant is still in dark about the outcome of the said representation. In the process he is still continued to

be deprived of his legitimate promotion.

A copy of the said representation is annexed as Annexure-E.

4.13 That the Applicant states that the amended provisions of the IAS (Pay) Rules have not put an absolute bar on promotion to the Supertime scale before completion of 16 years of service which will also be evident from the various promotion given to the IAS officers of which mention has been made above, which include even the officers belonging to 1986 batch. The same yardstick and/or criteria is required to be applied to the case of the Applicant towards granting him promotion to the supertime scale. The competent authority, apart from taking the approval of the Central Government is also vested with the power of relaxation which power cannot be exercised in a discriminatory manner, when there is clear vacancy to accommodate all the four selection grade officers, there is no earthly reason as to why the said officers be not promoted to the Supertime scale applying the same yardstick and/or criteria as was applied in respect of all other officers. A rule applicable to all officers, cannot be rigidly applied only in respect of the Applicant.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that *prima facie* the action/inaction on the part of the Respondents is not legally sustainable and the Applicant is entitled to the relief sought for in this Original Application.

(A)

5.2 For that all other officers having been promoted to supertime scale even before completion of 16 years of service from the year of allotment, the Applicant alone cannot be deprived of such promotion.

5.3 For that the amendment provisions of the IAS (Pay) Rules does not create any absolute bar for promotion to Supertime scale without having 16 years of service from the year of allotment.

5.4 For that even before the amended provisions of the Rules, Government instructions lying done the criteria of 16 years of service were holding the field and inspite of that officers were promoted to the supertime scale before completion of 16 years of service throughout India including the State of Meghalaya and thus there cannot be any discrimination only in respect of the Applicant.

5.5 For that the batchmates of the Applicant having been promoted there is no earthly reason why he should be left out.

5.6 For that there being clear vacancies to accommodate all the selection grade officers, the Applicant is entitled to be promoted, if need be in relaxation of the Rules and/or with the approval of the Central Government.

5.7 For that when the batch mates of the Applicant were promoted, there were vacancies to accommodate the Applicant and as such he is entitled to get his

promotion with retrospective effect.

5.8 For that in any view of the matter the action/inaction towards denial of promotion to the Applicant is not sustainable.

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To direct the Respondents to promote the Applicant to the supertime scale of IAS from the date when his batch mates viz., Shri B.K.Gohain and Shri M.K.Baruah were so promoted (i.e with effect from 24.10.2000).

8.2 To grant all consequential benefits of arrear salary etc. upon granting the relief above.

8.4 Cost of the application.

8.5 Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case and/or as may deemed fit and proper considering the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR :

During the pendency of the OA the Applicant prays for an interim order directing the Respondents to consider the case of the Applicant for promotion to supertime scale.

10. *****

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 6G791656
- ii) Date : 23.7.01
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I Shri Chandra Kumar Sharma, IAS, son of Late Kashinath Sarma, aged about 55 years at present working as Secretary to the Government of Assam, Food & Civil Supplies Department, Dispur, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case, the statements made in paragraphs b2,3,41-45, 48-412, 413 and 5 to 12 are true to my knowledge ; those made in paragraphs 46 and 47 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 23rd day of July 2001.

Chandra Kumar Sharma

Applicant

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL ::::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006

Annexure- A

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ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 23rd February, 1999

No. AAI. 1/99/19: Dr. B.K.Gohain, IAS (SCS-1986), Secretary to the Govt. of Assam, Personnel, General Administration and Secretariat Administration Departments is promoted to officiate in the Selection Grade of IAS in the scale of pay of Rs. 15100-400-18300/- per month with effect from 1.1.1999.

No. AAI. 1/99/19-A: Shri M.K.Barooah, IAS (SCS-1986), Secretary to the Govt. of Assam, Home, Political, Border Areas, Passport and Sports & Youth Welfare Departments is promoted to officiate in the Selection Grade of IAS in the scale of pay of Rs. 15100-400-18300/- per month with effect from 1.1.1999.

No. AAI. 1/99/19-B: Shri T.R.Dey, IAS (SCS-1986), Commissioner of Taxe Assam is promoted to officiate in the Selection Grade of IAS in the scale of pay of Rs. 15100-400-18300/- per month with effect from 1.1.1999.

No. AAI. 1/99/19-C: Shri C.K.Sharma, IAS (SCS-1986), Secretary to the Govt. of Assam, Department of Public Enterprises and Co-operation Departments is promoted to officiate in the Selection Grade of IAS in the scale of pay of Rs. 15100-400-18300/- per month with effect from 1.1.1999.

Sir/- S.R.ISLAM

Deputy Secretary to the Govt. of Assam

Memo No. AAI. 1/99/19-D :: Dated Dispur, the 23rd February, 1999
Copy to :-

1. The Accountant General (A&E), Assam, Maidanagon, Bultzola, Guwahati-28.
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. The Chairman, Assam State Electricity Board, Guwahati.
5. All Principal Secretaries/ Commissioners & Secretaries/Secretaries to the Govt. of Assam.
6. The Chief Electoral Officer, Assam, Dispur.
7. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
8. The Agricultural Production Commissioner, Assam, Dispur.
9. All Commissioners of Divisions, Assam.
10. The Chief Secretary to the Govt. of Meghalaya, Shillong.
11. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
13. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.

Attested
Anu. Moh.
Advocate

Contd.....

- 2 -

14. The Secretary to the Governor of Assam, Dispur.
15. The PPS to Chief Minister, Assam, Dispur.
16. All Principal Secretaries of the Autonomous Councils.
17. The Secretary, State Election Commission, Housefed Complex, Dispur.
18. All Deputy Commissioners/ Sub-Divisional Officers.
19. All Heads of Depts/ All Depts of Assam Secretariat.
20. The PS to Chief Secretary, Assam, Dispur.
21. The PS to Addl. Chief Secretary, Assam, Dispur.
22. All PS to Ministers/ Ministers of State.
23. Officers concerned.
24. Departments concerned.

By order etc.,

*11/10/77
S.R.ISLAM*

(S.R.ISLAM)
Deputy Secretary to the Govt. of Assam
Personnel (A) Department, Dispur

NO. 120011/1/99-AIS (I)-A
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING)

Now Delhi; the 24 April, 2000.

NOTIFICATION

In exercise of the powers
conferred by sub-section (1) of
India Services Act, 1951 (61 of
Government, after consultation with
of the States concerned, hereby
rules further to amend the Indian Administrative
Service (Pay) Rules, 1954, namely:

(1) Those rules may be called the Indian Adminis-
trative Service (Pay) Third Amendment Rules,
2000.

(2) They shall come into force from the date of
their publication in the Official Gazette.

In the Indian Administrative Service
(Pay) Rules, 1954, in rule 3, in sub-rule (2A),
after the proviso, the following proviso shall be
added, namely:-

Provided further that no member of the
service shall become eligible for appointment to the
Supertime Scale before completion of sixteen years
of service calculated from the date of appointment.

Attested

Amrit Nair
Advocate

- 2 -

assigned to him under rule 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, unless prior approval of the Central Government is obtained for making him so eligible before completion of the requisite length of service in public interest.

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(Y.P. DHINGRA)
Under Secretary to the Government of India.

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : 4)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006
G.O.M.R.

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 1st June, 2000

NO.AAI.18/97/113: Shri Rajiv Kumar Bora, IAS (RR-1985), Secretary to the Govt. of Assam, Finance Department is promoted temporarily and until further order to officiate in the Supertime Scale of IAS and posted as Commissioner & Secretary to the Govt. of Assam, Finance Department.

NO.AAI.18/97/113-A: Shri Saraswati Prasad, IAS (RR-1985), Secretary to the Governor of Assam is promoted temporarily and until further order to officiate in the Supertime Scale of IAS and posted as Commissioner & Secretary to the Governor of Assam.

NO.AAI.18/97/113-B: On return from leave, Shri Sumeet Jerath, IAS (RR-1985) is promoted temporarily and until further order to officiate in the Supertime Scale of IAS and his services are placed at the disposal of the W.P.T. & B.C. Department for appointment as Principal Secretary, Bodoland Autonomous Council, Kokrajhar with effect from the date of taking over charge.

NO.AAI.18/97/113-C: Shri L. Rynjah, IAS (RR-1974), Commissioner & Secretary to the Govt. of Assam, Agriculture Department and Principal Secretary, Bodoland Autonomous Council, Kokrajhar is relieved of the charge of Bodoland Autonomous Council with effect from the date of handing over charge.

Sd/- DR. B.K.GOHAIN
Secretary to the Government of Assam

Memo No. AAI.18/97/113-D :: Dated Dispur, the 1st June, 2000

Copy to :-

1. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-28.
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. The Chairman, Assam State Electricity Board, Guwahati.
5. All Principal Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
6. The Chief Electoral Officer, Assam, Dispur.
7. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
8. The Agriculture Production Commissioner, Assam, Dispur.
9. All Commissioners of Divisions, Assam.
10. The Chief Secretary to the Govt of Meghalaya, Shillong.
11. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
14. The Secretary to the Governor of Assam, Dispur.
15. The Secretary, Assam Legislative Assembly, Dispur.
16. The PPS to Chief Minister, Assam, Dispur.
17. All Principal Secretaries of the Autonomous Councils.
18. The Secretary, State Election Commission, Houseed Complex, Dispur.
19. All Deputy Commissioners/Sub-Divisional Officers.
20. The PS to Chief Secretary/Addl. Chief Secretary, Assam, Dispur.
21. All PS to Ministers/ Ministers of State.
22. Officers concerned.
23. Departments concerned.

By order etc.,

DR. B.K.GOHAIN

(T.N. SARMA)

Under Secretary to the Govt. of Assam

Attested
JUN 10 2000
R. K. NAIK
Advocate
U. K. NAIK

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI : 781006.

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 28th Sept./2000.

No. AAI. 18/97/119-A : Shri Kumar Sanjoy Krishna, IAS (PR-1985), Managing Director, Assam Tea Corporation, Guwahati is allowed proforma promotion in Supertime Scale with effect from the date of promotion of his immediate junior to Supertime Scale on the regular line.

On reversion from deputation Kumar Sanjoy Krishna, IAS will get the benefit or notional fixation of his pay in Supertime Scale with reference to the date of promotion of his immediate junior to Supertime Scale on the regular line under rule 5(5)(b) of the IAS (Pay) Rules.

No. AAI. 18/97/119-A : Shri J.P. Saikia, IAS (Non-SCS-1985) Member, Assam Board of Revenue is promoted temporarily and until further orders to officiate in the Supertime Scale of IAS with effect from the date of taking over charge.

On promotion to the Supertime Scale, he will continue to hold the post of Member, Assam Board of Revenue, Guwahati.

Sd/- B.K.Gohain,
Secretary to the Govt. of Assam,
Personnel (A) Department.

Memo. No. 18/97/119-B, Dated Dispur, the 28th Sept./ 2000.
Copy to :-

- 1) The Accountant General, (A&E), Assam, Maidamgaon, Guwahati-28.
- 2) Shri L. Singh, Deputy Accountant General, (Nonn.), Assam.
- 3) The Chairman, Assam Administrative Tribunal, Guwahati.
- 4) The Chairman, Assam Board of Revenue, Guwahati.

*Sh. Basu
28/9/2000*

Contd.... P#.

*Attested
Anu. Basu
(U. K. Nair)
Advocate*

MEMO NO. AAI.28/2000/3-C
(A : JURISDICTION) DATED 24/10/2000
DRAFTED BY : H.N. SARMA

Memo No. AAI.28/2000/3-C, 600 100 : Dated Dispur, the 24th October, 2000.

Copy to :

1. The Accountant General(A&E), Assam, Meghalaya,Guwahati-28.
2. Sri L. Singh, Deputy Accountant General(Admn.), Assam,Guwahati-28.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/Commissioners & Secretaries/Secretaries to the Government of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam Bhawan, New Delhi.
9. The Agriculture Production Commissioner, Assam, Dispur.
10. All Commissioners of Divisions, Assam.
11. The Chief Secretary to the Govt. of Meghalaya, Shillong.
12. The Commissioner & Secretary to the Chief Minister, Assam.
13. The Under Secretary to the Government of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
14. The Under Secretary to the Government of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
15. The Commr. & Secretary to the Governor of Assam, Dispur.
16. The Secretary, Assam Legislative Assembly, Dispur.
17. The PPS to Chief Minister, Assam, Dispur.
18. All Principal Secretaries of the Autonomous Councils, Assam.
19. All Deputy Commissioners/Sub-Divisional Officers, concerned to implement the P.G. & Pensions, Career Management Division, New Delhi.
20. All Heads of Departments/All Departments of Assam Secretariat.
21. The Secretary, State Election Commission, Assam.
22. The Deputy Director, Assam Government Press, Bamanimpaidan, Guwahati-21 for publication of the Notification.
23. The P.S. to Chief Secretary, Assam, Dispur.
24. The P.S. to Addl. Chief Secretary, Assam, Dispur.
25. All PS to Ministers/Ministers of State, Assam.
26. Officers concerned.
27. Departments concerned.
28. The Nazir, Assam Secretariat(C), Dispur.

By order etc.,

H.N. Sarma

24/10/2000

(H.N. Sarma)

Under Secretary to the Government of Assam,
Personnel (A) Department.

Dated Dispur, the 18-1-2001.

18-1-2001

From :- Shri C.K.Sharma, IAS,
Secretary to the Govt. of Assam,
Cooperation Deptt., Dispur.

To :- The Chief Secretary to the Govt. of Assam,
Dispur, Guwahati-6.

Sub :- Prayer for promotion to the Super-time Scale
in IAS Cadre.

Sir,

With due respect and humble submission, I would like to submit the following prayer before the Government of Assam for kind consideration and issuing necessary order at an early date.

1. That Sir, I was originally an officer of ACS-I Cadre of 1970 batch and I stood first in the Assam Civil Service Examination conducted by APSC in the year 1970. Immediately after selection, I joined as EAC in Mizo District and rendered most valuable services to the post of my ability in the insurgency affected Hill District of Assam at the risk of my life for more than a year. Thereafter, I have served in different capacities as SDO (Civil) Mongaldei, ADC, Barrang District, Managing Director, Assam Hill Small Industries Development Corporation, Deputy Commissioner, Barrang, Mongaldei Deputy Commissioner, Barpeta upto 1992.

2. That Sir, after completion of 22 years of services in ACS Cadre, the High Level Selection Committee constituted by the Government of India selected the undersigned to the IAS Cadre considering my service records and I was given the year of allotment of 1986 in IAS Cadre. There were three other officers viz. Shri M.K.Barua, Shri B.K.Gehain and Shri T.R. Dey selected for IAS Cadre and given the year of allotment of 1986.

3. That Sir, the Government of Assam was pleased to promote all of us to the post of Selection Grade in the year 1998 vide Govt. Notification No. AAL/90/19-c, dtd. 23-2-1999. (Copy at Annexure-A).

4. That Sir, although as per Govt. of India Notification No. 20011/1/99-AIS (II-A) dated 5-4-2000 amending the IAS Service Rules, an officer of IAS Cadre is to complete 16 years of services calculated from the year of allotment for consideration of promotion to the post of Super-Time Scale, there is a provision that an officer can be promoted to the post of Super-time Scale even before completion of 16 years of services with approval of the Central Government. However, the State Govt. may promote an officer before completion of 16 years of Supertime Scale subject to subsequent approval by the Government of India also and this has been done in many cases which have been mentioned below in Para-5. The law is not so much rigid in respect of completion of 16 years of service for promotion to Supertime Scale. Therefore, there is much scope for promotion of officers before completion of 16 years by relaxing the rules. (Copy enclosed at Annexure-B).

Attested
Anu. 18/1/2001
(U.K. NAIK)

Contd...2).

5. That Sir, the Govt. of Assam has been pleased to promote about eight numbers of officers of IAS Cadres to the Supertime Scale before completion of 16 years details of which are shown below :-

(a) Shri Rajib Kumar Bora, IAS, Shri Saraswati Prasad, IAS and Shri Sumit Jereth, IAS (all belonging to PR-1985 batch) were promoted to the Supertime Scale vide Memo NO.AAI.18/97/113-B, dated. 1-6-2000. (Copy enclosed at Annexure-C). They were promoted to the Supertime Scale after completion of 15 years of services only.

(b) Kumar Sanjoy Krishna, IAS (PR-1985) and Shri J.P. Saikia (non-ACS-1985) were promoted to the Supertime Scale vide Memo No.18/97/119-B, dated 28-9-2000. (Copy enclosed at Annexure-B). All of them were also promoted after completion of only 15 years of service only.

(c) Shri Rajiv Kapoor, IAS (PR-1986), Shri B.K.Gohain, IAS and Shri M.K.Barua (both of them-SCS-1986) were promoted to the Supertime Scale vide Memo NO. AAI.28/2000/3-c, dated. 24-10-2000 (Copy enclosed at Annexure-E). These three officers were promoted to the Supertime Scale of IAS even before completion of 15 years of services in IAS Cadre.

(d) The case of promotion of Shri T.R.Dey, IAS and Shri C.K.Sharma, IAS to Supertime Scale could have been give along with Shri B.K.Gohain and Shri M.K.Barua and there were vacancies for Supertime Scale at that time itself. (The statement showing the vacancies along with the total cadre is enclosed at Annexure-F).

6. That Sir, at the time of promotion of Shri Rajiv Kapoor, IAS, Shri B.K.Gohain, IAS and Shri M.K.Barua, IAS the cases of promotion of Shri T.R.Dey, IAS and Shri C.K.Sharma, IAS should have also been considered since both of them belong to the same batch of 1986 and as there were 5 clear vacancies in the Supertime Scale at that time, but both of them were denied natural justice and were discriminated from getting due promotion.

7. That Sir, myself and Shri T.R. Dey, IAS have already completed 15 years as on 1-1-2001 in IAS Cadre but our cases for Supertime Scale promotion have not yet been considered inspite of the fact that there are clear vacancies of Supertime Scale and Govt. of Assam is in a position to give us promotion subject to approval by the Govt. of India in due course.

8. That Sir, on earlier occasions also, many officers of IAS Cadres viz. Shri A.K.Sachan, IAS, Shri J.P.Meena, IAS, Shri Alek Kumar, IAS, Shri V.B.Pyarelal, IAS and Shri N.C.Barua, IAS and Shri J.S.L.Vasava, IAS etc. were promoted to the Supertime Scale of IAS before completion of 16 years of services

In view of the commitment of the Government to offer justice, fairness and equal treatment to remove discrimination in important matters like appointment, selection and promotion etc. I earnestly request that the

(3)

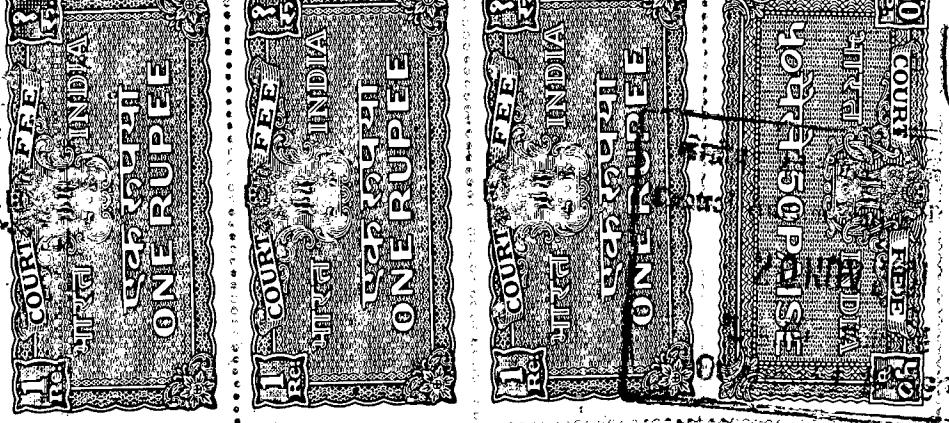
relevant file may be called for from the Personnel Department and necessary order may kindly be issued promoting Shri T.R. Dey, IAS and Shri C.K. Sharma, IAS to the post of Supertime Scale with effect from the date of promotion of Shri Ravi Kapoor, IAS, Shri B.K. Gehain, IAS and Shri M.K. Barua, IAS since we belong to the same batch of 1986 and since all of us are rendering the services at the same level of posts of Secretary to the Government of Assam.

Yours faithfully,

(C.K. Sharma, IAS),
Secretary, Govt. of Assam,
Cooperation Deptt., Dispur.

18-01-2001

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Majoranae D. and
J. C. W. Ad vent
C. St. of Sicily
and Sardinia
T. A. Bonhag, Sr. C. A. A. K.

IN the Central Administrative Tribunal : Guwahati Bench.

O.A.No. 287/2001

Shri C.K. Sharma.

.....Applicant

- versus -

The Union of India & Others.

In the matter of

An affidavit-in-opposition

filed on behalf of the respondent

No. 2 in the

26542

I, Shri H.N. Sarma, Under Secretary to the Govt. of Assam, Personnel(A)Department aged about 54 years son of Late R.K.Sarma by profession service, resident of Dispur, P.O. and P.S. Dispur, Dist. Kamrup do hereby solemnly affirm and state as follows :

1. That the Respondent No.2 and the Respondent No.4 in O.A.No.287/2001 are the Chief Secretary to the Govt. of Assam and the Secretary to the Govt. of Assam, Personnel Deptt. respectively. A copy of the petition has been served upon the said respondents. I have been authorised to represent the respondent No.2 and 4 as the Under Secretary of Personnel(A)Dept. I have perused the petition, understood the contents thereof. I do not admit any of the allegations/averments which are not borne out by records. Any allegations/averments which are not specifically admitted herein-after are to be deemed as denied by this deponent.

contd...P/2

2. That with regard to the statements made in paras 2, 3, 4.1, 4.2, 4.3, 4.7, 4.8, 6 and 7 of the original application, this deponent has no comments to make. However, this deponent does not admit anything which are not consistent with records.
3. That with regard to the statements made in paragraph 1 of the petition, this deponent states here that some of the IAS officers who are senior to the applicant are yet to be promoted to super time scale. Hence it is not admitted that the applicant's non-promotion to this scale has caused any grievance to the applicant.
4. That with regard to the statements made in paragraph 4.4 of the petition this deponent states that the applicant was appointed to IAS by promotion from the select list prepared in 1992 while the 3 officers stated in the petition were appointed to the IAS by promotion from the respective select lists of previous years as shown below :
 1. Dr.B.K.Gohain, - Appointed from the select list prepared in 1990.
 2. Shri M.K.Baruah, - Appointed from the select list of 1991.
 3. Shri T.R.Dey, - Appointed from the select list of 1991.

In the cadre of IAS, the applicant is junior to the above named 3 officers though it is admitted that the applicant was assigned the

same year of allotment i.e. 1986 alongwith the other 3 officers. But the applicant has no right to claim his promotion to the super time scale on the ground that some of his seniors belonging to the same year of allotment have been promoted to this scale.

5. That with regard to the statements made in paragraph 4.5 of the petition, this deponent does not admit that the applicant should get the benefit of promotion to super time scale alongwith his senior officers having the same year of allotment on the ground that the applicant got his promotion at a time with his above named seniors to selection grade which is the immediate lower scale to super time scale.
6. That with regard to the statements made in para 4.6 of the petition this deponent states that as per the Government of India's earlier guidelines, IAS officers became eligible for promotion to super time scale on completion of 16 years of service. The Government of the state of Assam however, promoted IAS officers to Super Time Scale even before completion of 16 years. In view of the latest amendment of IAS (Pay) Rules, 1954 issued vide notification No.20011/1/99-AIS(II)-A dated 5-4-2000, the earlier guidelines stand nonexistent. As per the said amended IAS (Pay) Rules, prior approval of the Government of India is required for promotion of IAS officers to Super Time Scale before completing 16 years.

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7. That with regard to the statements made in para 4.9 of the petition, this deponent states that the two officers, namely Dr. B.K.Gohain and Shri M.K.Baruah are senior to the applicant and hence it is denied that the promotion of the said two officers to the Super Time Scale has resulted in any discrimination to the applicant.
8. That with regard to the statements made in paragraphs 4.10 and 4.11 of the petition, this deponent does not admit that there are 39 vacancies at the level of supertime scale.

Be it stated there that 19 cadre posts in Super Time Scale of IAS are available under Assam wing of the Joint cadre. 25% of 88 numbers of senior posts under state Government (i.e. 22 posts) are specified for state deputation reserve. 12 posts are held by IAS on deputation within the state and these posts are counted against 22 posts under state deputation reserve. However sometimes any of these 12 deputation posts may be held by officers of other service(s) for public interest, administrative exigencies and cadre management of IAS. For instance, at present the post of Commissioner, Guwahati Municipal Corporation is held by an ACS officer as the previous Commissioner belonging to IAS of Guwahati Municipal Corporation had to be transferred immediately as Deputy Commissioner. Some times any of the deputation posts is allowed to be held as additional charge for the above mentioned reasons. Incumbency of officers of other services in any of the deputation posts of IAS under state deputation is a stop gap arrangement and it does not mean deletion of the posts from the list of posts for IAS under State Deputation Reserve. Creation of ex-cadre posts in different scales of IAS is permissible to the extent of 22 numbers of posts under state Deputation Reserve minus the number of officers on state deputation/inter state deputation. Therefore as per the Rules, 10 ex-cadre posts are permissible

19 (c)

in different scale. Even if all the 10 posts are created in super time scale the total number of posts in this scale, cadre and ex-cadre taking together is restricted to 29. This deponent fails to understand that on what basis the applicant has fixed the number of posts in super time scale at 39. Immediately before promotion of Dr.B.K.Gohain and Shri M.K.Baruah, 27 officers in super time scale were position. Of these 27 officers, 2 officers namely, Shri A.Jain and Shri L. Rynjah were promoted to the scale of Principal Secretary. On promotion of Shri Ravi Cappor, Dr. B.K.Gohain and Shri M.K. Baruah, the number of officers in Super Time Scale rose to 28. Thereafter one officer namely Shri K.K.Mittal, IAS (RR:83) went on central deputation and 2 officers namely Shri N.C. Baruah and Shri D.C. Barman retired. Again another officer namely Shri M.G.V.K.Bhanu was reverted promaturely in the interest of Public Service and on his reversion the number of officers in super time scale stands at 26 which has again come down to 25 as Shri A.K.Thakur,IAS (RR:79) has been released on central deputation on 4-9-2001. 4 officers namely Shri K.D. Tripathi, IAS, who is senior to the applicant has in the meantime reverted from central deputation, 3 officers namely, Shri R.Yadav, IAS, Shri D.Jhingran , IAS and Shri A. Chaturvedi, IAS, are due for reversion and they are senior to the applicant. One more

officer namely, Shri A.Kumar, IAS (RR:83) has however been released on Central Deputation. As accomodation in super time scale is required for the officers coming from Central deputation, there is no scope now to promote any more officers including the applicant. As it is necessary to keep accommodation in super time scale for senior officers on their reversion from Central deputation, the promotion of the applicant as well as another officer senior to him could not be considered at the time of promotion of Dr.B.K.Gohain and Shri M.K. Baruah.

A copy of the list of 19 cadre posts in Super Time Scale of IAS and another list of 12 posts held by IAS on deputation are annexed hereto and marked as Annexures I and II respectively.

9. That with regard to the statements made in paragraph 4.12 of the petition, this deponent states that the Personnel (A) Department did not receive the applicant's representation dated 18-1-2001. However his representation dated 31-7-2001 has been received.
10. That with regard to the statements made in the paragraph 4.13 of the petition, this deponent states that as per the Government of India's latest amendment of the IAS (Pay) Rules, 1954 as referred to by the applicant, promotion to Super Time Scale can be made before completion of 16 years of service only with the prior approval of Government of India. The Government of Assam was aware of

- 7 -

the said amendment only after promotion of the three officers namely Shri R. Kapoor, Dr.B.K.Gohain and Shri M.K.Bahooah of 1986 batch of IAS. These three officers have however not got their pay slip in super time scale from Accountant General. Due to the aforementioned reasons as stated in paragraph 8 of this affidavit-in-opposition, the Government of Assam is not in a position to promote the applicant to Super Time Scale.

11. That with regard to the submissions made in paragraph 5 of the original Application, this deponent submits that as no illegality has been done to the applicant in the matter of his promotion to Super Time Scale, the applicant is not entitled to any relief. This deponent denies all the allegations made by the applicant against this deponent. The reasons for non-promotion of the applicant and another officer senior to applicant to Super Time Scale has been stated in the foregoing paragraph 8 of this affidavit-in-opposition. It is further submitted that though the applicant is assigned the same year of allotment i.e. 1986 alongwith the 3 officers as mentioned by the applicant. But in the cadre of IAS, the applicant is junior to the said 3 officers in as much as the the applicant was appointed to IAS by promotion ~~from~~

select list prepared in 1992 while the said 3 officers were promoted from the select list prepared in 1990 and 1991 respectively. In view of the facts stated above, it is submitted that no discrimination has been made in respect of the applicant and he is not entitled to any relief.

12. That with regard to the statements made in this affidavit-in-opposition and those made in paras 1,2,5,11 are true to my knowledge and those made in paras 3,4,6,8,9 and 10 are true to my information based on records which I believe to be true and the rest are my humble submissions made before this hon'ble Tribunal.

And I sign this affidavit on this 7th day of November, 2001 at Guwahati.

Deponent. *Harendra Nath Sarma*

I certify & signed before me

11/11/01
Sub-Div. 2, DCCG
Guwahati

APPENDIX A

GRADE DIVISIONS IN THE GOVT. SCALAS.

General Secretary of Divisions	1 post.
General Labour & Secretary for Agricultural Production & R.D. & S.P. Secretary to the Govt.	1 post
Chairman, Board of Revenue	1 post
Comptroller & Auditor to Government	11 posts
Resident Comptroller	2 post
Chief Financial Officer and Comptroller General to Government	3 posts

Sub. 13. 10 posts.

ANNEXURE-II

DEPUTATION LETTERS ISSUED DURING THE PERIOD OF AUGUST 16, 19
DEPUTED AGAINST 22 POSTS DURING DEPUTATION PERIOD.

1.	Principal Secretary, Bodoland Autonomous Council.	"	1 post.
2.	Project Director, ARIASE	"	1 post.
3.	Project Director, Assam Tea Corporation.	"	1 post.
4.	Principal Secretary, Karbi Anglong Autonomous Council.	"	1 post.
5.	Principal Secretary, B.C. Hills Autonomous Council.	"	1 post.
6.	Member (Personnel) AGP.	"	1 post.
7.	Managing Director, AYRA Bank	"	1 post.
8.	Comptroller, AYRA.	"	1 post.
9.	Secretary, Assam State Council	"	1 post.
10.	Project Director, NESTOR DPE.	"	1 post.
11.	Managing Director, AYRA	"	1 post.
12.	Managing Director, AYRA	"	1 post.

"TOTAL" 12 posts